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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,606	07/14/2000	Douglas P. Hart	0050.2015-000	6151
959	7590	03/09/2006		
LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			EXAMINER MACKOWEY, ANTHONY M	
			ART UNIT 2623	PAPER NUMBER

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/616,606

Applicant(s)

HART, DOUGLAS P.

Examiner

Anthony Mackowey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. The amendment filed December 15, 2005 has been entered and made of record.
2. Applicant's arguments filed December 15, 2005 have been fully considered but they are not persuasive.
3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner clearly indicated in the previous office action (page 3, paragraph 7, lines 4-9) a motivation found in the Bacs reference (col. 2, lines 8-14 and 47-54) for combining the teachings of Bacs and Hsueh.
4. At page 10, lines 8-17, applicant states, "The Bacs reference discloses an imaging stabilizing apparatus including a lens aperture positioned adjacent a camera lens. A motion sensor mounted to the camera, generates signals indicative of spurious camera motion which is utilized to produce movements of the lens aperture transversely to the lens axis in direction opposite to spurious camera motions ...there is no motivation to combine the teachings of the Hsueh reference with the Bacs reference. Bacs is expressly (emphasis added) directed to correcting for spurious camera motion to stabilize an image focused on an imaging plane. It is

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not directed to imaging systems for resolving 3D topography... or imaging a target in three dimensions as is presently claimed by Applicant.”

5. The Examiner respectfully traverses this argument. Applicant’s arguments are based on only one disclosed application of the invention taught by Bacs, not the entire teaching of the Bacs reference. The Bacs reference suggests several possible applications of the invention, one being that cited by Applicant (that particular application of the invention can be found beginning at col. 8, line 50.). However, this is not the only application of the invention taught by Bacs. Bacs teaches the invention can be used in a stereoscopic imaging application (col. 4, lines 26-30), in computer generation of images, which can be displayed in 3D (col. 6, line 63 – col. 7, lines 12) and range finding (col. 8, lines 29-50), thus Bacs does teach applications of the invention with regard to imaging in three dimensions. Applicant has merely chosen one possible application taught by Bacs as evidence the reference is not combinable with the Hsueh reference. Bacs clearly discloses applications of the invention that are in the same field of endeavor as Hsueh, obtaining disparate images for use in imaging in three dimensions, and therefore the combination and motivation for combining the Hsueh and Bacs references was proper.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1, 2, 5-11, 13, 14, 16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsueh et al. ("Real-time 3D topography by speckle image correlation" cited on applicant's IDS), hereafter Hsueh, in view of Bacs Jr. (USPN 5,699,112), hereafter Bacs.

7. Regarding claims 1 and 7, Hsueh discloses an imaging system and method for imaging a target in three dimensions (abstract), the system and method comprising: a light projection source (laser speckle generator) for projecting a beam of light onto the target; an image acquisition subsystem (CCD cameras) for acquiring at least two images from light reflected by the target through a lens, an aperture element and a camera disposed along an optical axis (page 1, last paragraph to page 2, first paragraph); and a correlation processor for processing the acquired images according to a sparse array image correlation process (page 2, second paragraph). Hsueh does not disclose that the image acquisition subsystem comprises a moveable aperture.

8. Bacs discloses an apparatus for three-dimensional imaging wherein the image acquisition subsystem further includes a moveable aperture element (col. 4, lines 56-59, FIGS. 1 and 2, an actuator or motor which operates to move aperture in parallax scanning motion relative to lens optical axis). It would have been obvious to one of ordinary skill in the art at the time the invention was made to sequentially acquire at least two images from different angles using a moveable aperture element as taught by Bacs in order to generate a three-dimensional model of an object using a single camera without having to move the camera to different image capture positions and without having to use two cameras, thus avoiding mismatches, resulting in a more stable image (col. 2, lines 8-14 and 47-54).

9. Regarding claims 2 and 8, Bacs discloses that the image acquisition subsystem comprises a lens, an aperture element and a camera disposed along an optical axis (FIGS. 1 and 2) and wherein the aperture element defines an opening offset from the optical axis (FIGS. 1 and 2, The aperture 30 is offset from the optical axis 25.) and the image acquisition subsystem further includes rotation means for rotating the aperture element about the optical axis (col. 4, lines 56-59, an actuator or motor; FIG. 1, Scanning pattern 36 clearly shows rotation about the axis.) such that the at least two images are acquired sequentially from different angles (col. 5, lines 7-27).

10. Regarding claim 5, Bacs discloses that the image acquisition subsystem comprises a lens, an aperture element and a camera disposed along an optical axis and wherein the camera includes a single CCD element (FIGS. 1 and 2; col. 4, lines 40-43).

11. Regarding claims 6 and 9, Hsueh discloses that the light projection source includes a diffuser for projecting a beam of light having a random pattern (page 1, last paragraph to page 2, first paragraph).

12. Regarding claims 10 and 16, in an imaging system having a lens, an aperture element and a camera disposed along an optical axis (inherent), Hsueh discloses an imaging method and system for imaging a target in three dimensions (abstract), the method and system comprising: a light projection source for projecting a beam of light onto the target; an image acquisition subsystem for acquiring at least a first and second image at the camera from light reflected by the target through the lens (page 1, last paragraph to page 2, first paragraph); and a correlation processor for processing the acquired images according to an image correlation process to resolve three dimensional components of the target (page 2, second paragraph). Hsueh does not disclose that the aperture element defines an opening offset from the optical axis and the image

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acquisition subsystem further includes rotation means for rotating the aperture element about the optical axis such that an opening of the aperture element offset from the optical axis is set to first and second positions and the at least two images are acquired at the CCD element sequentially from different angles.

13. Bacs discloses apparatus for three-dimensional imaging wherein the aperture element includes an opening offset from the optical axis (FIGS. 1 and 2, The aperture 30 is offset from the optical axis 25) and the image acquisition subsystem further includes rotation means for rotating the aperture element about the optical axis (col. 4, lines 56-59; FIG. 1) such that the at least two images are acquired at the CCD element (col. 4, lines 40-43) sequentially from different angles (col. 5, lines 7-27; see above discussion of claims 1 and 7).

14. Regarding claim 11, Hsueh discloses that the processing includes processing the acquired images according to a sparse array image correlation process (page 2, second paragraph).

15. Regarding claims 13 and 18, Hsueh discloses that the processing further includes recursive (iterative) correlation (page 2, paragraphs 4-6).

16. Regarding claims 14 and 19, Hsueh discloses that the correlation processor provides correlation error correction (page 2, paragraphs 4-6).

17. Claims 12, 15, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsueh in view of Bacs as applied to claims 11, 14 and 16 above, and further in view of Hart (USPN 5,850,485, cited on applicant's IDS).

18. Regarding claims 12 and 17, Hsueh discloses processing of the acquired images according to a sparse array image correlation process which comprises forming first and second

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image arrays of pixel values from respective first and second images, each pixel value associated with one of a number of pixels, and performing a correlation process on the selected pixel values comprising creating first and second sparse image arrays of the selected pixel values and their locations in the respective first and second image arrays, performing individual correlations successively between pixel entries of the first sparse image array and pixel entries of the second sparse image array within a pixel distance of each other, and cumulating the correlations in a correlation table at respective distance entries (page 2, second paragraph to last paragraph).

Hsueh does not explicitly disclose selecting pixel values in the image arrays which are beyond a pixel threshold value. Hart discloses sparse array image correlation wherein a threshold level is set and only the pixel values that exceed the threshold level are retained in a sparse image array (column 6, line 2-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to select pixel values in the image arrays beyond a pixel threshold value as taught by Hart in order to avoid processing pixels having a value below the threshold to speed overall processing (column 7, line 15-23).

19. Regarding claims 15 and 20, Hart discloses that the correlation processor provides sub-pixel resolution processing (column 5, line 42-54; column 8, line 61-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide sub-pixel resolution processing as taught by Hart in order to improve accuracy while increasing processing speed (column 1, line 58-column 2, line 9).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

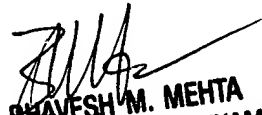
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Mackowey whose telephone number is (571) 272-7425. The examiner can normally be reached on M-F 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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